IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1068 (S/S) of 2007

1. Constable no. 50411 Dev Raj Singh S/o Late Sri Babu Ram
2. Constable no. 50478 Satish Kumar S/o Sri Kattar Singh
3. Constable no. 50627 Raj Kumar S/o Sri Pratap Singh

All at present posted in 40th B.N. P.A.C., Haridwar, Uttarakhand

---------Petitioners

Versus

1. State of Uttarakhand through Secretary Home, Uttarakhand Government, Dehradun
2. Additional Director General of Police (Administration) Uttarakhand, Dehradun
3. Commandant 40th B.N. P.A.C., Haridwar, Uttarakhand

---------Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner and Sri N.P. Shah, learned Standing Counsel State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 10.08.2007 passed by respondent no. 3 (Annexure No. 3, 4 & 5 to this writ petition).
2. Issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioners to continue as constable in P.A.C. B.N. 40th Haridwar, Uttarakhand.

3. Pass any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the present circumstances of the case.
4. Award the costs of writ petition to the petitioners.

The stand of the petitioners is that they are working as Constable in 40th Battalion. P.A.C., Haridwar. Under U.P. Reorganization Act, 2000, the petitioners had opted for State of U.P. and they have been finally allocated by Union of India to State of U.P.

Learned counsel for the petitioner has submitted that after final allocation in pursuance to the circular issued by Union of India, wherein the State Governments have been asked to consider the case of the employees for mutual transfer, petitioners applied for mutual transfer and the Additional Director General of Police (Administration), Uttarakhand, Dehradun on 18th May, 2007 asked the Commandant 40th B.N. P.A.C., Haridwar not to relieve the constables, who have applied for mutual transfer until further orders. Along with the aforesaid letter, a list was also attached in which the name of the petitioners find place at Serial No. 39, 42 and 47. Learned counsel for the petitioner has further submitted that the Government has not taken any decision till date on the question of the petitioners' mutual transfer nor the petitioners have been communicated any decision.

Learned counsel for the petitioner has also stated that in spite of the order passed by the Additional Director General of Police (Administration) on 18th May, 2007, by the impugned order dated 10th August, 2007 by the office of respondent no. 3, the petitioners have been directed to report in the State of Uttar

Pradesh and have been relieved for new posting in the State of Uttar Pradesh on 10th August, 2007.

This order has been assailed by the petitioner mainly on three grounds. First, the Government has not yet taken any decision on the question of mutual transfer relating to petitioners and before taking any decision, the impugned order has been passed. Second, the petitioners have already established their families in the State of Uttarakhand and third, the respondents are using pick and choose policy by accepting the request of some of the constables, such as Durgesh Kumar Giri, Mahipal Singh, Sukhpal Singh and Navneet Tyagi etc., who have been retained by the State of Uttarakhand for mutual transfer, whereas the petitioners have been directed to relieve and, in fact, they have been relieved on 10th August, 2007 for State of Uttar Pradesh by rejecting the request of the petitioners, who are similarly situated constables. Further the Government has not fixed any criteria to take decision in the matter of mutual transfer. Learned counsel for the petitioner has submitted that the action of the State Government is discriminatory.

The petitioners as alleged in para 13 of the writ petition, that the Government has not taken any decision into the matter so far and in case, the decision has been taken, the same has not been communicated to the petitioners till date. This argument of the learned counsel for the petitioner is contradictory. In case, the decision is not taken by the Government, the petitioners cannot say that there was any discrimination by the Government in picking and choosing the constables for relieving for State of Uttar Pradesh.

By the impugned order, it is clear that the petitioners have already been relieved for State of U.P. on 10th August, 2007 and after relieving of petitioners from State of Uttarakhand to State of Uttar Pradesh, this Court cannot pass any order now to retain the petitioners in State of Uttarakhand. However, liberty is given to the petitioners to make representation before the Additional Director General of Police (Administration), Uttarakhand, Dehradun raising all their grievances and he is directed to take decision on the representation of the petitioners within a period of two weeks from the date of production of a certified copy of this order along with the representation, if any.

With this direction, the writ petition is finally disposed of. All the pending applications stand disposed of.

Office is directed to provide a certified copy of this order to the learned counsel for the petitioner by 16th August, 2007 on payment of usual charges.

(M.M. Ghildiyal, J.)

14.08.2007
VKS